



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

SEP 25 2014

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL No.: 7009 1680 0000 7677 8718
RETURN RECEIPT REQUESTED

The Corporation Company
Registered Agent for Harold Marcus Limited
30600 Telegraph Road
Suite 2345
Bingham Farms, Michigan 48025

-and -

Mark Shreve, Esq.
Garan Lucow Miller P.C.
111 West Long Lake Road
Suite 300
Troy, Michigan 48098-6333

Re: Harold Marcus Limited (Harold Marcus)
EPA ID No.: MIT 270 012 321
Consent Agreement and Final Order

RCRA-05-2014-0015

Dear Corporation Company and Mr. Shreve:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order (CAFO) in resolution of the referenced case. We filed the original with the Regional Hearing Clerk on

September 25, 2014.

Please pay the civil penalty of \$8,415 in accordance with paragraph 55 of this CAFO, and reference your check with the Docket Number RCRA- **RCRA-05-2014-0015**.

Also, enclosed is a *Notice of Securities and Exchange Commission Registrant's Duty to Disclose Environmental Legal Proceedings*.

Thank you for your cooperation in resolving this matter.

Sincerely,



for / Gary J. Victorine, Chief
RCRA Branch

Enclosures

cc: Todd Marvel, Illinois Environmental Protection Agency (todd.marvel@illinois.gov)
John Craig, Michigan Department of Environmental Quality (craigj@michigan.gov)

NOTICE OF SECURITIES AND EXCHANGE COMMISSION REGISTRANTS' DUTY TO DISCLOSE ENVIRONMENTAL LEGAL PROCEEDINGS

Securities and Exchange Commission regulations require companies registered with the SEC (e.g., publicly traded companies) to disclose, on at least a quarterly basis, the existence of certain administrative or judicial proceedings taken against them arising under Federal, State or local provisions that have the primary purpose of protecting the environment. Instruction 5 to Item 103 of the SEC's Regulation S-K (17 CFR 229.103) requires disclosure of these environmental legal proceedings. For those SEC registrants that use the SEC's "small business issuer" reporting system, Instructions 1-4 to Item 103 of the SEC's Regulation S-B (17 CFR 228.103) requires disclosure of these environmental legal proceedings.

If you are an SEC registrant, you have a duty to disclose the existence of pending or known to be contemplated environmental legal proceedings that meet any of the following criteria (17 CFR 229.103(5)(A)-(C)):

- A. Such proceeding is material to the business or financial condition of the registrant;
- B. Such proceeding involves primarily a claim for damages, or involves potential monetary sanctions, capital expenditures, deferred charges or charges to income and the amount involved, exclusive of interest and costs, exceeds 10 percent of the current assets of the registrant and its subsidiaries on a consolidated basis; or
- C. A governmental authority is a party to such proceeding and such proceeding involves potential monetary sanctions, unless the registrant reasonably believes that such proceeding will result in no monetary sanctions, or in monetary sanctions, exclusive of interest and costs, of less than \$100,000; provided, however, that such proceedings which are similar in nature may be grouped and described generically.

Specific information regarding the environmental legal proceedings that must be disclosed is set forth in Item 103 of Regulation S-K or, for registrants using the "small business issuer" reporting system, Item 103(a)-(b) of Regulation S-B. If disclosure is required, it must briefly describe the proceeding, "including the name of the court or agency in which the proceedings are pending, the date instituted, the principal parties thereto, a description of the factual basis alleged to underlie the proceedings and the relief sought."

You have been identified as a party to an environmental legal proceeding to which the United States government is, or was, a party. If you are an SEC registrant, this environmental legal proceeding may trigger, or may already have triggered, the disclosure obligation under the SEC regulations described above.

This notice is being provided to inform you of SEC registrants' duty to disclose any relevant environmental legal proceedings to the SEC. This notice does not create, modify or interpret any existing legal obligations, it is not intended to be an exhaustive description of the legally applicable requirements and it is not a substitute for regulations published in the Code of Federal Regulations. This notice has been issued to you for information purposes only. No determination of the applicability of this reporting requirement to your company has been made by any governmental entity. You should seek competent counsel in determining the applicability of these and other SEC requirements to the environmental legal proceeding at issue, as well as any other proceedings known to be contemplated by governmental authorities.

If you have any questions about the SEC's environmental disclosure requirements, please contact the SEC Office of the Special Senior Counsel for Disclosure Operations at (202) 942-1888.

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:

**HAROLD MARCUS LIMITED
c/o The Corporation Company
Registered Agent for
Harold Marcus Limited
U.S. EPA ID No.: MIT270012321**

RESPONDENT.

) **Docket No.: RCRA-05-2014-0015**

) **Proceeding to Commence and Conclude**
) **an Action to Assess a Civil Penalty**
) **Under Section 3008(a) of the Resource**
) **Conservation and Recovery Act,**
) **42 U.S.C. § 6928(a)**



CONSENT AGREEMENT AND FINAL ORDER

PRELIMINARY STATEMENT

1. This is an administrative action commenced and concluded under section 3008(a) of the Solid Waste Disposal Act, also known as the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928(a), and sections 22.13(b) and 22.18(b) (2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules) as codified at 40 C.F.R. part 22.

2. Complainant is the Director of the Land and Chemicals Division, United States Environmental Protection Agency (U.S. EPA), Region 5.

3. U.S. EPA provided notice of commencement of this action to the States of Illinois and Michigan pursuant to section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

4. Respondent is Harold Marcus Limited, a Canadian company whose registered agent is located in the State of Michigan.

5. According to 40 C.F.R. § 22.13(b), where the parties agree to settle one or more causes of action before the filing of a complaint, an administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO).

6. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

7. Respondent consents to the terms of this CAFO, including the assessment of the civil penalty specified below.

JURISDICTION AND WAIVER OF RIGHT TO HEARING

8. Jurisdiction for this action is conferred upon U.S. EPA by sections 2002(a)(1), 3006(b), and 3008 of RCRA, 42 U.S.C. §§ 6912(a)(1), 6926(b), and 6928.

9. For the purpose of this proceeding, Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

10. Upon the effective date of this CAFO, Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

11. Respondent certifies that it is complying with RCRA, 42 U.S.C. §§ 6901 – 6939e, the regulations at 40 C.F.R. §§ 260.1 – 279.82 and the federally-authorized state corollaries to the federal regulations, including Michigan and Illinois.

STATUTORY AND REGULATORY BACKGROUND

12. U.S. EPA has promulgated regulations, codified at 40 C.F.R. parts 260 through 279, governing generators and transporters of hazardous waste and facilities that treat, store, and dispose of hazardous waste or used oil, pursuant to, among others, sections 3001 – 3007, 3013 and 3014 of RCRA, 42 U.S.C. §§ 6921 – 6927, 6934 and 6935.

13. Pursuant to section 3006 of RCRA, 42 U.S.C. § 6926, the Administrator of U.S. EPA may authorize a state to administer the RCRA hazardous waste program in lieu of the federal program when the Administrator finds that the state program meets certain conditions. Any violation of regulations promulgated pursuant to subtitle C (sections 3001-3023 of RCRA, 42 U.S.C. §§ 6921-6939e) or any state provision authorized pursuant to section 3006 of RCRA constitutes a violation of RCRA, subject to the assessment of civil penalties and issuance of compliance orders as provided in section 3008 of RCRA, 42 U.S.C. § 6928.

14. Pursuant to section 3006(b) of RCRA, 42 U.S.C. § 6926(b), at 51 Fed. Reg. 3778 (January 31, 1986), the Administrator of U.S. EPA granted the State of Illinois final authorization to administer a state hazardous waste program in lieu of the federal government's base RCRA program effective on the date of publication. This program has been amended and reauthorized several times since.

15. Under section 3008(a) of RCRA, 42 U.S.C. § 6928(a), U.S. EPA may issue an order assessing a civil penalty for any past or current violation. The Administrator of U.S. EPA may assess a civil penalty of up to \$25,000 per day for each violation of subtitle C of RCRA according to section 3008 of RCRA, 42 U.S.C. § 6928. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note (1996), required U.S. EPA to adjust its penalties for inflation on a periodic basis. Pursuant to the Civil Monetary Penalty Inflation Adjustment Rule, published at 40 C.F.R. part 19, U.S. EPA may assess a civil penalty of up to \$32,500 per day for each violation of subtitle C of RCRA that occurred after March 15, 2004 through January 12, 2009, and \$37,500 per day for each violation of subtitle C of RCRA that occurred after January 12, 2009.

COMPLAINANT'S FACTUAL ALLEGATIONS AND ALLEGED VIOLATIONS

16. Respondent was and is a "person" as defined by 35 IAC § 720.110, 329 IAC §§ 3.1-4-1 and 3.1-4-1(b), 40 C.F.R. § 260.10, and section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

17. At all times relevant to this CAFO, the Respondent was an "owner" or "operator" of Harold Marcus Limited, as those terms are defined at IAC § 720.110 [40 C.F.R. § 260.10].

18. The Respondent is a corporation registered in Michigan, and doing business in Illinois and Michigan.

19. Respondent notified the State of Michigan it is a liquid industrial waste hauler.

20. Respondent was and is assigned U.S. EPA Identification Number MIT270012321.

21. At all times relevant to this CAFO, Respondent was a "transporter" of hazardous waste as defined by 35 IAC § 720.110 [40 C.F.R. § 260.10].

22. On or about May 12, 2012, U.S. EPA issued a Request for Information (Information Request) to the Respondent.

23. Respondent responded to the Information Request on or about June 6, 2012.

24. On or about September 13, 2012, U.S. EPA issued a Supplemental Information Request to the Respondent.

25. Respondent responded to the Supplemental Information Request on or about October 23, 2012.

26. On or about February 4, 2013, U.S. EPA issued a Supplemental Information Request to the Respondent.

27. Respondent responded to the Supplemental Information Request on or about March 4, 2013.

28. On or about September 13, 2012, U.S. EPA issued a Notice of Violation (the NOV) to the Respondent.

29. On July 23, 2013, U.S. EPA sent a Pre-Filing Notice and Opportunity to Confer (PFN) letter to the Respondent.

30. Respondent received the PFN on or about July 28, 2013.

COUNT 1 – Acceptance of Hazardous Waste for Shipment or Transport
Without a EPA Acknowledgement of Consent for Export

31. Complainant incorporates paragraphs 1 through 30 of this CAFO as though set forth in this paragraph.

32. Under 35 IAC § 722.150 [40 C.F.R. § 262.50], a transporter transporting hazardous waste for export must comply with the applicable requirements of 35 § IAC Part 723 [40 C.F.R. Part 263].

33. Under 35 IAC § 722.151 [40 C.F.R. § 262.51], “EPA Acknowledgement of Consent” means the cable sent to EPA in a receiving country that acknowledges the written consent of the receiving country to accept the hazardous waste and describes the terms and conditions of the receiving country’s consent to the shipment.

34. In the case of exports of hazardous waste, 35 IAC § 723.120(a) (2) [40 C.F.R. § 263.20(a) (2)] provides a transporter may not accept such hazardous waste from a primary exporter or other person if he knows the shipment does not conform to the EPA Acknowledgement of Consent, and unless, in addition to a manifest signed by the generator, the transporter is also provided with an EPA Acknowledgement of Consent which is attached to the Uniform Hazardous Waste Manifest (Manifest).

35. On July 14, 2011 (Manifest Tracking Number 000039884MWI), and twice on July 21, 2011 (Manifest Tracking Number 000039887MWI and Manifest Tracking Number 000039888MWI), the Respondent accepted hazardous waste and hazardous waste manifests from Clean Harbors RSC of Chicago, Illinois for transport and export of the hazardous waste to Canada.

36. After receipt of the hazardous waste under Manifest Tracking Numbers 000039884MWI and 000039887MWI, Respondent did transport and export the hazardous waste to Canada.

37. After receipt of the hazardous waste under Manifest Tracking Number 000039888MWI, Respondent's tanker truck carrying the hazardous waste was on-route to its ultimate destination in Canada when it exploded at a truck stop adjacent to Interstate 94, near Sawyer, Michigan.

38. The manifests for the shipments identified in Paragraph 35 did not have an EPA Acknowledgement of Consent attached to each of the manifests when Respondent accepted them and the hazardous waste for shipment and export.

39. Under 35 IAC § 723.120(c) [40 C.F.R. § 263.20(c)], the transporter must ensure that the manifest accompanies the hazardous waste, and in the case of exports, the transporter must also ensure that a copy of the EPA Acknowledgement of Consent also accompanies the hazardous waste.

40. On July 14, 2011 (Manifest Tracking Number 000039884MWI) and twice on July 21, 2011 (Manifest Tracking Number 000039887MWI and Manifest Tracking Number 000039888MWI), the Respondent accepted hazardous waste and hazardous waste manifests from Clean Harbors RSC of Chicago, Illinois for transport and export of the hazardous wastes to

Canada, and did not ensure that an EPA Acknowledgement of Consent accompanied the hazardous waste and each hazardous waste manifest.

41. By accepting waste from a primary exporter or other person of hazardous waste for export without an EPA Acknowledgment of Consent attached to the hazardous waste manifest, Respondent violated 35 IAC § 723.120(a)(2) [40 C.F.R. § 263.20(a)(2)].

42. By not ensuring that a copy of the EPA Acknowledgement of Consent also accompanies the hazardous waste intended for export as indicated on the manifest, the Respondent violated 35 IAC § 723.120(c) [40 C.F.R. § 263.20(c)].

43. Respondent's violation of 35 IAC §§ 723.120(a)(2) and (c) [40 C.F.R. §§ 263.20(a)(2) and (c)] subjects Respondent to an order for compliance and civil penalties under Section 3008 of RCRA, 42 U.S.C. § 6928.

44. Each shipment of hazardous waste Respondent accepted as identified in Paragraph 35 is a separate violation of 35 IAC §§ 723.120(a)(2) and (c) [40 C.F.R. §§ 263.20(a)(2) and (c)] under Section 3008 of RCRA § 6928.

COUNT 2 – Failure to Maintain Records

45. Complainant incorporates paragraphs 1 through 44 of this Complaint as though set forth in this paragraph.

46. Under 35 IAC § 723.120(d) (2) [40 C.F.R. § 263.20(d) (2)] a transporter who delivers a hazardous waste to the designated facility must retain one copy of the manifest.

47. The Respondent did not retain one copy of the July 14, 2011 manifest (Manifest Tracking Number 000039884MWI) and of the July 21, 2011 manifest (Manifest Tracking Number 000039887MWI) after delivering hazardous waste to the designated facility.

48. Under 35 IAC § 723.122(d) [40 C.F.R. § 263.22(d)], a transporter who transports hazardous waste out of the United States must keep a copy of the manifest indicating that the

hazardous waste left the United States, for a period of three years from the date the hazardous waste was accepted by the initial transporter.

49. The Respondent failed to retain one copy of the July 14, 2011 manifest (Manifest Tracking Number 000039884MWI) and of the July 21, 2011 manifest (Manifest Tracking Number 000039887MWI) for a period of three years from the date the hazardous waste was accepted for transport.

50. By failing to retain one copy of the July 14, 2011 manifest (Manifest Tracking Number 000039884MWI) and of the July 21, 2011 manifest (Manifest Tracking Number 000039887MWI) after delivering hazardous waste to the designated facility, the Respondent violated 35 IAC § 723.122(d)(2) [40 C.F.R. § 263.22(d)(2)].

51. By failing to retain one copy of the July 14, 2011 manifest (Manifest Tracking Number 000039884MWI) and of the July 21, 2011 manifest (Manifest Tracking Number 000039887MWI) for a period of three years from the date the hazardous waste was accepted for transport, the Respondent violated 35 IAC § 723.120(d) [40 C.F.R. § 263.20(d)].

52. Respondent's violation of 35 IAC § 723.122(d) (2) [40 C.F.R. § 263.22(d) (2)], and 35 IAC § 723.120(d) [40 C.F.R. § 263.20(d)], subjects Respondent to an order for compliance and civil penalties under Section 3008 of RCRA, 42 U.S.C. § 6928.

53. Each failure to retain one copy of the hazardous waste manifest of each of the shipments identified Paragraph 35 is a separate violation of 35 IAC § 723.122(d)(2) [40 C.F.R. § 263.22(d)(2)] and 35 IAC § 723.120(d) [40 C.F.R. § 263.20(d)] under Section 3008 of RCRA, 42 U.S.C. § 6928.

CIVIL PENALTY

54. Pursuant to section 3008(a) (3) of RCRA, 42 U.S.C. § 6928(a) (3), Complainant determined that an appropriate civil penalty to settle this action is \$8,415. In determining the penalty amount, Complainant took into account the seriousness of the violation and any good faith efforts to comply with the applicable requirements. Complainant also considered U.S. EPA's RCRA Civil Penalty Policy, dated June 23, 2003. Complainant also considered Respondent's responses to Complainant's PFN and information submitted Respondent in response to requests for information, and Respondent's pre-filing cooperation in this matter.

55. Within 30 days after the effective date of this CAFO, Respondent must pay a \$8,415 civil penalty for the RCRA violations described herein by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

The check must bear Respondent's name and the case docket number of this CAFO.

56. A transmittal letter stating Respondent's name, the case title and the case docket number must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Diane M. Sharrow (LR-8J)
RCRA Branch
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Mark Palermo (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

57. This civil penalty is not deductible for federal tax purposes.

58. If Respondent does not timely pay the civil penalty, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties, and the United States enforcement expenses for the collection action. Respondent agrees that the validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

59. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a) (1). Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

GENERAL PROVISIONS

60. This CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts alleged in the CAFO.

61. This CAFO does not affect the right of U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

62. This CAFO does not affect Respondent's responsibility to comply with RCRA and other applicable federal, state, local laws or permits.

63. This CAFO is a "final order" for purposes of 40 C.F.R. § 22.31, U.S. EPA's RCRA Civil Penalty Policy, and U.S. EPA's Hazardous Waste Civil Enforcement Response Policy (December 2003).

64. The terms of this CAFO bind Respondent, its successors, and assigns.


65. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

66. Each party agrees to bear its own costs and attorney's fees in this action.

67. This CAFO constitutes the entire agreement between the parties.

Harold Marcus Limited, Respondent


Sept 4, 2014
Date



Kyle Campbell
Manager of Safety and Compliance

United States Environmental Protection Agency, Complainant

9/19/2014
Date




Margaret M. Guerriero, Director
Land and Chemicals Division

In the Matter of:
Harold Marcus Limited
Docket No. RCRA-05-2014-0015

FINAL ORDER

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

9-22-2014
Date



Susan Hedman
Regional Administrator
United States Environmental Protection Agency
Region 5

Consent and Final Order
In the Matter of: Harold Marcus Limited

DOCKET NO: RCRA-05-2014-0015

CERTIFICATE OF SERVICE

I hereby certify that today I filed the original of this Consent Agreement and Final Order ((CAFO) docket number **RCRA-05-2014-0015** the Regional Hearing Clerk (E-19J), United States Environmental Protection Agency, Region 5, 77 W. Jackson Boulevard, Chicago, Illinois 60604, and that I mailed the second original copy to Respondent by first-class, postage prepaid, certified mail, return receipt requested, by placing it in the custody of the United States Postal Service addressed as follows :

Harold Marcus Limited
c/o The Corporation Company
Registered Agent for
Harold Marcus Limited
30600 Telegraph Road
Suite 2345
Bingham Farms, Michigan 48025
Certified Mail No.: 7009 1680 0000 7677 8718

I certify that I delivered a correct copy of the CAFO by intra-office mail, addressed as follows:

Regional Judicial Officer (C-14J)
U.S. Environmental Protection Agency
77 W. Jackson Boulevard
Chicago, Illinois 60604

On the 24th Day of September

Ruben B. Aridge

Ruben B. Aridge
Office Administrative Assistant
United States Environmental Protection Agency
Region V
Land and Chemicals Division LM-8J
77 W. Jackson Blvd, Chicago, IL 60604-3590

Certified Mail Receipt Number: **7009 1680 0000 7677 8718**